



Nevada State Board of Medical Examiners

* * * MINUTES * * *

OPEN SESSION BOARD MEETING

Held in the Conference Room at the Offices of the
Nevada State Board of Medical Examiners
1105 Terminal Way, Suite 301, Reno, Nevada 89502

and videoconferenced to

the Conference Room at the Offices of the
Nevada State Board of Dental Examiners
6010 S. Rainbow Boulevard, Building A, Suite 1, Las Vegas, Nevada 89118

FRIDAY, SEPTEMBER 10, 2010 – 8:30 a.m.

Board Members Present

Charles N. Held, M.D., President
Benjamin J. Rodriguez, M.D., Vice President
Van V. Heffner
Beverly A. Neyland, M.D.
Theodore B. Berndt, M.D.
Michael J. Fischer, M.D.
Valerie J. Clark, BSN, RHU, LUTCF
Donna A. Ruthe

Board Members Absent

Javaid Anwar, M.D.

Staff Present

Douglas C. Cooper, CMBI, Executive Director
Edward O. Cousineau, J.D., Deputy Executive Director
Lyn E. Beggs, J.D., General Counsel
Bradley O. Van Ry, J.D., Deputy General Counsel
Laurie L. Munson, Chief of Administration and Information Systems
Pamela J. Castagnola, CMBI, Interim Chief of Investigations
Lynnette L. Daniels, Chief of Licensing
Donya Jenkins, Finance Manager
Johnna S. LaRue, Compliance Officer

Also Present

Keith D. Marcher, J.D., Chief Deputy Attorney General

Agenda Item 1

CALL TO ORDER AND ANNOUNCEMENTS

- Roll Call/Quorum
- Announcement of Appointment by the Governor and Introduction of New Board Member
Donna A. Ruthe
- *Charles N. Held, M.D., President*

The meeting was called to order by President Charles N. Held, M.D., at 8:30 a.m.

Dr. Held welcomed new Board Member Donna A. Ruthe, and Ms. Ruthe provided a brief description of her background.

Ms. Beggs took roll call, and all Board Members were present with the exception of Dr. Anwar. Ms. Beggs announced there was a quorum.

Mr. Cooper read the Board's Mission Statement. He then explained that it needed to be updated to add perfusionists to the list of professions the Board licenses, and stated it would be on the agenda for the Board's December meeting.

Mr. Cooper stated that general public comment would be accepted following Agenda Item 2, public comment regarding Agenda Item 5 only would be taken during discussion of that item, and general public comment would again be accepted at the end of the meeting.

Agenda Item 2

APPROVAL OF MINUTES

- June 11, 2010 Board Meeting – Open/Closed Sessions

Dr. Rodriguez moved to approve the Minutes of the June 11, 2010 Board Meeting – Open/Closed Sessions. Dr. Fischer seconded the motion, and it passed, with Ms. Ruthe abstaining from the vote because she was not yet a member of the Board and therefore not present at the June 11, 2010 Board meeting, and the remaining Board Members voting in favor of the motion.

Dr. Held asked whether there were any members of the public present who would like to make a public comment, and there were none.

Agenda Item 3

**CONSIDERATION AND APPROVAL OF JULY 1 THROUGH DECEMBER 31, 2009
AUDIT BY KOHN COLODNY LLP, CERTIFIED PUBLIC ACCOUNTANTS**

- *Beth Kohn-Cole, CPA and Megha Menteer, CPA, Kohn Colodny LLP; Douglas C. Cooper, CMBI, Executive Director; Donya Jenkins, Finance Manager*

Beth Kohn-Cole, CPA explained that this audit was a short-period audit due to the Board's change in its fiscal year. The auditors issued a letter that is required communication to the Board, and if there were significant issues with management or other issues, they would have been addressed in that letter. There were no significant issues. The audit report is an "unqualified opinion," which auditors refer to as a "clean audit opinion," and that is what the Board wants to receive. She then outlined the audit findings. As of December 31, 2009, the Board had total assets of approximately 5 million dollars, the largest portion of which was cash due to prepaid license fees. The liabilities were about 4.4 million dollars, the largest portion of which related to deferred revenue for the subsequent year's license revenue. Net assets totaled \$632,000, of which almost \$100,000 represented assets such as tables and chairs, and the rest was unrestricted. The carryover was approximately one-half million dollars, which is not significant, and that is what you want to see as a state board. The change in net assets was \$106,000 for that six-month period. Most of the issues noted in the management letter related to the prior management team and all items noted have been addressed by the current management.

Mr. Heffner moved that the Board accept and approve the six-month audit. Dr. Berndt seconded the motion, and it passed unanimously.

Agenda Item 4

**REVIEW AND DISCUSSION CONCERNING THE ADMINISTRATORS IN MEDICINE
(AIM) ASSESSMENT FINDINGS**

- *Douglas C. Cooper, CMBI, Executive Director*

Mr. Cooper stated that on August 5 and 6, the Board underwent an assessment by the Administrators in Medicine (AIM), which was basically an audit of its operations. The assessment team members were Tina Steinman, Executive Director of the Missouri Board of Medicine, Randal Manning, Executive Director of the Maine Board of Medicine, Leslie Gallant, immediate past-Executive Director of the Alaska Board of Medicine, Lisa Robin, Senior Vice President of Government Relations and Policy at the Federation of State Medical Boards, Dr. Jim Christensen, from southern Nevada, and Dr. Bill O'Shaughnessy, from Carson City, the last two having no affiliation with the Board other than as licensees. The assessment was extensive and the final report had not yet been completed, so it will be on the agenda for review at the Board's December meeting.

Agenda Item 5

**CONSIDERATION OF ADOPTION OF AMENDMENTS TO NEVADA
ADMINISTRATIVE CODE CHAPTER 630**

- Review of Public Comments on, and Consideration of Adoption of, Proposed Amendment to Nevada Administrative Code Chapter 630, to Amend NAC 630.230(g) to Remove Chorionic Gonadotrophic Hormones (HCG) Language From That Subsection
- Review of Public Comments on, and Consideration of Adoption of, Proposed Amendment to Nevada Administrative Code Chapter 630, to Amend NAC 630.230(g) by Removing Subsection (g) in its Entirety
- Review of Public Comments on, and Consideration of Adoption of, Proposed Amendments to Nevada Administrative Code Chapter 630, to Amend NAC 630.350 and NAC 630.530 to Include Language Which Indicates That Physician Assistant and Practitioner of Respiratory Care Licensees Must Provide Evidence of Required Continuing Medical Education or Continuing Education Units Completion, as a Condition of Licensure Renewal or When Their Licenses Have Previously Been Suspended for Non-Payment
- *Edward O. Cousineau, J.D., Deputy Executive Director*

Mr. Cousineau explained that before the Board were two potential changes to NAC 630.230(g). The first would remove the language regarding chorionic gonadotrophic hormones from subsection (g) and the second would remove the entire subsection (g). A workshop was held in Las Vegas on May 25, at which no public input was received. A public hearing was held in Reno on June 30, which was videoconferenced to Las Vegas. At that time significant comment was received with regard to the proposed changes. The entirety of the content of the public input received involved adoption of the second proposed change, to remove subsection (g) from the regulation.

Mr. Cousineau asked whether there were any members of the public present who would like to make a public comment.

Weldon Havins, M.D., stated that there could be an issue if the Board just removed chorionic gonadotrophic hormones in that if other FDA-approved medications that are controlled substances become available, there could be an argument that because they are not listed in the regulation, they would not be permitted to be used, which would seem to be in conflict with the FDA. Therefore, he thinks the better thing to do would be to remove subsection (g).

Discussion ensued regarding why the particular regulation was written in the first place. Dr. Held stated there is no indication in the legislative history as to how or why it was promulgated. Mr. Cooper concurred. Further discussion ensued regarding the appropriateness of eliminating the language from subsection (g) or eliminating the entire subsection (g).

Dr. Rodriguez moved that the Board adopt proposed regulation R052-10 (to remove the entire subsection (g)) as written. Dr. Berndt seconded the motion, and it passed unanimously.

Mr. Cousineau explained that the other two proposed regulations before the Board were proposed to clarify language in the regulations to clearly delineate that when a licensee fails to submit either CME or CEU in the timeframe required, it is grounds for automatic suspension of the licensee's license.

Discussion ensued regarding what happens if a licensee is unable to complete his or her CME or CEU requirements within the timeframe required due to illness or other unforeseen circumstance.

Dr. Fischer moved to approve proposed regulations R048-10 and R049-10. Dr. Neyland seconded the motion.

A vote was taken on the motion, and it passed unanimously.

Agenda Item 6

UPDATE REGARDING BOARD'S HEALTH PROFESSIONALS ASSISTANCE PROGRAMS

- *Douglas C. Cooper, CMBI, Executive Director; Peter A. Mansky, M.D., Executive Medical Director, Nevada Professionals Assistance Program (NPAP)*

Mr. Cooper explained that the Board currently has memorandums of understanding with four health professionals assistance programs. Three of these are Case Management Services of Nevada, Inc., offering services in northern and southern Nevada, LifePath Recovery LLC, offering services in northern Nevada, and Professional Recovery Network, based out of Monte Vista Hospital. All three offer services for all types of substance abuse and behavioral problems, and all offer hair and urine testing services that the Board can utilize, when necessary. He stated that Dr. Peter Mansky would describe the services offered by the fourth program, Nevada Professionals Assistance Program. Through these memorandums of understanding, the Board's licensees now have four programs to choose from, rather than one as before.

Peter A. Mansky, M.D., explained that the Nevada Health Professionals Assistance Foundation (NHPAF) was different from every other program in that they didn't provide treatment; they provided guidance for evaluation and treatment, and they thought that was very important in terms of keeping the assessment and treatment separate. Their board of directors became discouraged because the funding became reduced and their reserve was running out, so they decided to dissolve the corporation. They had 50 active participants in the south and 10 to 15 in the north who were active in the program at the time, who wanted to continue in the program, so they decided to build an independent corporation, the Nevada Professionals Assistance Program (NPAP), which will offer the same services as the NHPAF program did. They have entered into Memorandums of Understanding with both the Board of Medical Examiners and the Board of Osteopathic Medicine.

Discussion ensued regarding how the NPAP will operate.

Dr. Mansky stated that new contracts will be written for each of the current participants, in light of the dissolution of the former corporation and the creation of the new one.

Mr. Cooper stated that Board staff would make a determination whether they needed copies of the new contracts for the Board-ordered participants in the program and if so, would obtain them from Dr. Mansky.

Agenda Item 7

PRESENTATION BY AFFILIATED MONITORS, INC. REGARDING ITS PRACTITIONER ASSISTANCE PROGRAMS

- *Vincent L. DiCianni, Esq., President and Founder, Affiliated Monitors, Inc.*

Vincent L. DiCianni, Esq., described his background and explained how Affiliated Monitors, Inc. came to be. The company was created in 2004, with the idea of remedial types of programs. The company started in Massachusetts and currently they work with most of the boards in Massachusetts, including the medical board, and also work with many other boards throughout the country. He described the types of monitoring services the company provides. Their fees are paid by those they are monitoring, so there is no cost to the boards who utilize them. They contract directly with the license holder, but monitoring reports are provided directly to the board.

Discussion ensued regarding the costs of their assessment programs, how long it takes to set up on-site monitoring programs, their use of in-state and out-of-state monitors, and the intrusiveness involved in over-the-shoulder monitoring. Mr. DiCianni stated they have begun providing practice re-entry assessments, as they have seen an increased need for it over the last nine months or so.

Mr. Cooper requested that the Board authorize creation of an exploratory committee to determine what type of services the Board may need from Affiliated Monitors, talk with Affiliated Monitors to find out if they are able to offer those services to the Board, and if so, to utilize their services for the next monitoring case to see how well it works.

Dr. Held moved that the Board give Mr. Cooper the requested authorization. Dr. Fischer seconded the motion.

Discussion ensued regarding whether the Board would need to enter into an agreement or a contract with Affiliated Monitors in order to use their services. Mr. Cooper stated that would be determined by the exploratory committee.

A vote was taken on the motion, and it passed unanimously.

Agenda Item 8

CONSIDERATION OF REQUEST BY NEVADA DIVISION OF CHILD AND FAMILY SERVICES THAT MANDATED REPORTER TRAINING BE REQUIRED FOR MEDICAL LICENSURE IN NEVADA

- *Douglas C. Cooper, CMBI, Executive Director*

Mr. Cooper explained that the Board had received a request from the Nevada Division of Child and Family Services (DCFS) that the Board make mandated reporter training a requirement for medical licensure in Nevada. Requirements for licensure are delineated under NRS 630.160, and that statute would have to be amended in order to add this new requirement. Additionally, making it mandatory might lengthen the time it takes to license some physicians. Another problem is that at this point, the training itself is not yet AMA Category 1 approved, and under the statute, all training must be AMA Category 1 approved. With these things in mind, he contacted DCFS and suggested that the Board pursue an educational campaign, to which DCFS agreed. The Board published an article in its July newsletter regarding mandatory reporting and placed a link on the Board's website where practitioners could go to

view the training video free of charge and learn more about mandatory reporting. DCFS will supply an article for the Board's next newsletter which will talk about the mechanics of reporting child abuse when physicians discover it. The request now before the Board is whether to accept and support mandatory child abuse reporter training as a condition of licensure or go pursue an aggressive educational campaign now and consider making the training mandatory in some respect later.

Dr. Fischer moved that the Board go with an educational campaign first. Dr. Neyland seconded the motion.

Discussion ensued regarding the mandatory child abuse reporting requirement, the proposed request by DCFS, and the possibility that granting these types of requests and imposing additional mandatory CME requirements would result in lengthening the licensure process considerably.

A vote was taken on the motion, and it passed unanimously.

Agenda Item 9

CONSIDERATION AND DISCUSSION REGARDING STATUTORY CHANGE REQUIRING MANDATORY CME IN CONTROLLED SUBSTANCE PRESCRIBING FOR MEDICAL LICENSURE IN NEVADA

- *Douglas C. Cooper, CMBI, Executive Director; Lesley Dickson, M.D., Chair, Governor's
Committee on Co-Occurring Disorders*

Mr. Cooper explained this item was on the agenda for the Board to consider requiring a certain number of continuing medical education (CME) hours in drug abuse prevention for renewal of licensure, as was the case with the required CME on weapons of mass destruction. This grew out of the Board's participation in a committee comprised of some of the boards, as well as other entities, which was created pursuant to Assembly Bill 326 from the 2009 Legislative Session. The committee was tasked with identifying minimal-cost ways to tackle the prescription drug abuse problem in Nevada on at least one or two levels. The recommendations made by the committee to the Legislative Committee on Health care at its last meeting were as follows: (1) that patients sign an acknowledgment that their physician may run and review a prescription monitoring report under certain circumstances; (2) that the Department of Public Safety and the Pharmacy Board be allowed to work together to provide information to other states on patients, and thereby on practitioners, through the prescription monitoring program, and receive the same from other states; and (3) that immunity from liability for providing or taking and using information from the prescription monitoring program be provided for certain players. From that also came a suggestion that we also educate physicians on the problem of drug abuse and drug abuse prevention. The suggestion did not reach the presentation level to the Legislative Committee on Health Care from that committee, but it has been pursued through other avenues. One of the main proponents of this education is Dr. Lesley Dickson, the Chair of the Governor's Committee on Co-Occurring Disorders. There is also a bill draft request for the 2011 Legislative Session sponsored by Assemblyman Maurice Dennis that would require CMEs on this subject.

Lesley Dickson, M.D., described her background and work in the area of drug addiction. She then described how the prescription monitoring program works. She is aware there is some resistance to the proposed requirement, so they created a very minimal requirement of two CME hours one time only.

Mr. Cooper stated there are currently two additional bill draft requests for the 2011 Legislative Session that may also relate to this issue. Today, the Board is being asked to consider whether it would be in support of modifying NRS 630.252(2)(b) to require 2 hours CME on drug abuse prevention.

Lawrence P. Matheis, Executive Director of the Nevada State Medical Association (NSMA), stated the NSMA would support the development of appropriate CME programs aimed at this issue. However, the mandating of CME is problematic, as he is aware of at least five worthy groups that have various issues on which they want to require special training by physicians, three of which have already made it into bill drafts. If they all pass, half of the total number of CMEs required will be mandated through statute. This is not a targeted approach, and requiring all physicians to take all of these various courses, when they only really apply to those who practice in certain specialty areas, is problematic.

Discussion ensued regarding whether the Board should support mandating CMEs or whether an educational program would be more appropriate.

Dr. Fischer moved that the Board undertake a general education program on over-prescribing of opiates or on drug abuse. Dr. Berndt seconded the motion, and it passed unanimously.

Agenda Item 10

ADJUDICATION IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. LAYFE ANTHONY, M.D., BME CASE NO. 09-III93-1

- Keith D. Marcher, J.D., Chief Deputy Attorney General

Dr. Held named the adjudicating Board Members who would be considering the matter.

Since neither Dr. Held nor Dr. Rodriguez were adjudicating Board members for the adjudication and Dr. Anwar was not in attendance, Mr. Heffner presided over the matter.

Mr. Marcher asked whether there were any adjudicating Board Members who had either not reviewed the materials or had any questions regarding the materials provided relative to the adjudication, and there were none. Mr. Marcher then explained the procedure the Board should follow in adjudicating the matter and read the charges contained in the Complaint against Dr. Anthony.

Mr. Heffner moved that the Board find Dr. Anthony violated NRS 630.301(3) because he was disciplined in another state. Dr. Fischer seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Mr. Heffner moved that the Board revoke Dr. Anthony's license. Dr. Fischer seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Dr. Fischer moved that the Board recover its costs in the case, payable within 90 days. Dr. Neyland seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Ms. Castagnola stated the costs incurred by the Board in the case were \$671.22.

Agenda Item 11

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. MARILYN ATKINS, R.R.T.*,
BME CASE NO. 10-23244-1

- Lyn E. Beggs, J.D., General Counsel

Dr. Held named the adjudicating Board Members who would be considering the matter.

Since neither Dr. Held nor Dr. Rodriguez were adjudicating Board members for the adjudication and Dr. Anwar was not in attendance, Mr. Heffner presided over the matter.

Ms. Beggs outlined the facts of the case and the terms of the proposed settlement agreement. She stated Ms. Atkins' license had previously been suspended for non-renewal and she has chosen not to reinstate her license pending the decision of the Board, so she has not been practicing since March.

Dr. Fischer moved that the Board accept the settlement as presented. Mr. Heffner seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 12

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. STELLA CHOU, M.D.*,
BME CASE NO. 08-9655-1

- Lyn E. Beggs, J.D., General Counsel

John Cotton, Esq. was present as counsel for Dr. Chou.

Dr. Held named the adjudicating Board Members who would be considering the matter.

Since neither Dr. Held nor Dr. Rodriguez were adjudicating Board members for the adjudication and Dr. Anwar was not in attendance, Mr. Heffner presided over the matter.

Ms. Beggs stated that she and Mr. Cotton had worked diligently to put together the settlement that was before the Board. The Investigative Committee was very involved in the settlement process and Ms. Beggs believes the settlement is a fair resolution of the provable facts in the case. Dr. Chou continues to reside in the state of Utah, does not hold an active license in the state of Nevada and does not intend to return to the state of Nevada, all of which is acknowledged in the settlement agreement. She then outlined the terms of the proposed settlement agreement.

Mr. Cotton stated that he was in agreement with what Ms. Beggs had presented.

Ms. Clark moved that the Board accept the settlement as presented. Dr. Neyland seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 13

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. SALVADOR BORROMEO, M.D.*, BME CASE NO. 09-12423-1

- *Edward O. Cousineau, J.D., Deputy Executive Director*

Dr. Held named the adjudicating Board Members who would be considering the matter.

Since neither Dr. Held nor Dr. Rodriguez were adjudicating Board members for the adjudication and Dr. Anwar was not in attendance, Mr. Heffner presided over the matter.

Mr. Cousineau outlined the facts of the case and the terms of the proposed settlement agreement.

Dr. Fischer moved that the Board accept the settlement as presented. Dr. Neyland seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 14

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. CARLOS INOCENCIO, M.D.*, BME CASE NO. 09-22388-1

- *Edward O. Cousineau, J.D., Deputy Executive Director*

Dr. Held named the adjudicating Board Members who would be considering the matter.

Since Dr. Held was not an adjudicating Board member for the adjudication, Dr. Rodriguez presided over the matter.

Mr. Cousineau outlined the facts of the case and the terms of the proposed settlement agreement.

Dr. Neyland moved that the Board accept the settlement as presented. Dr. Rodriguez seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 15

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. ANTONINO GUMINA, M.D.*, BME CASE NO. 10-12370-1

- *Lyn E. Beggs, J.D., General Counsel*

Since Dr. Held was not an adjudicating Board member for the adjudication, Dr. Rodriguez presided over the matter.

Ms. Beggs outlined the facts of the case and the terms of the proposed settlement agreement.

Dr. Rodriguez moved that the Board accept the settlement as presented. Dr. Fischer seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 16

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. YVONNE BARRY, M.D.*, BME CASE NO. 10-7835-1

- *Lyn E. Beggs, J.D., General Counsel; Bradley O. Van Ry, J.D., Deputy General Counsel*

Dr. Barry was present in Las Vegas.

Since Dr. Held was not an adjudicating Board member for the adjudication, Dr. Rodriguez presided over the matter.

Ms. Beggs explained that Dr. Barry's license had been summarily suspended by the Board on April 8, 2010. Through the pendency of this disciplinary matter, Dr. Barry has very diligently addressed the underlying concerns contained within the complaint, and she and Mr. Van Ry can both attest to the very positive change they have seen in Dr. Barry, which has been very heartening. Ms. Beggs then outlined the terms of the proposed settlement agreement, which included that Dr. Barry's license would be reinstated.

Dr. Rodriguez moved that the Board accept the settlement as presented. Dr. Fischer seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 17

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. PAMELA GABRIEL, M.D.*, BME CASE NO. 10-18713-1

- *Bradley O. Van Ry, J.D., Deputy General Counsel*

Since Dr. Held was not an adjudicating Board member for the adjudication, Dr. Rodriguez presided over the matter.

Mr. Van Ry outlined the facts of the case and the terms of the proposed settlement agreement.

Dr. Rodriguez inquired as to the terms of the North Carolina Consent Order, which had not been provided to the Board for consideration, and Mr. Van Ry described those terms.

Dr. Rodriguez moved that the Board accept the settlement as presented. Dr. Fischer seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 18

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. MICHAEL ROSENMAN, M.D.*, BME CASE NO. 10-11476-1

- *Bradley O. Van Ry, J.D., Deputy General Counsel*

Since Dr. Held was not an adjudicating Board member for the adjudication, Dr. Rodriguez presided over the matter.

Mr. Van Ry outlined the facts of the case and the terms of the proposed settlement agreement.

Dr. Rodriguez moved that the Board accept the settlement as presented. Dr. Fischer seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 19

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. JOHN D. LEWIS, M.D.*, BME CASE NO. 09-5834-1

- *Edward O. Cousineau, J.D., Deputy Executive Director*

Since neither Dr. Held nor Dr. Rodriguez were adjudicating Board members for the adjudication and Dr. Anwar was not in attendance, Mr. Heffner presided over the matter.

Mr. Cousineau outlined the facts of the case and the terms of the proposed settlement agreement.

Dr. Fischer moved that the Board accept the settlement as presented. Mr. Heffner seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 20

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. DONALD CASSIDY, M.D.*, BME CASE NO. 08-6105-1

- *Edward O. Cousineau, J.D., Deputy Executive Director*

Dr. Held named the adjudicating Board Members who would be considering the matter.

Mr. Cousineau stated that through negotiations with Dr. Cassidy's counsel, Ed Lemons, Esq., additional information was received that had not been available to the Board or provided by Dr. Cassidy at the time he provided a response to the Complaint. The information was compelling and put the Board in a negative position as far as advancing prosecution. Although Dr. Cassidy is not acknowledging wrongdoing, he does acknowledge that if not for his failure to provide the information in a timely manner, there would have been no need to go through this protracted process, and therefore he is willing to acknowledge that the costs incurred in the investigation and prosecution of the matter should be borne by him and he will pay those.

Dr. Berndt moved that the Board accept the settlement as presented. Ms. Clark seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 21

CONSIDERATION OF HEARING OFFICER SYNOPSIS OF RECORD AND
RECOMMENDATION REGARDING MOTION TO DISMISS OF
CLIFFORD CARROL, M.D. IN THE MATTER OF *THE NEVADA STATE BOARD OF
MEDICAL EXAMINERS VS. CLIFFORD CARROL, M.D.*, BME CASE NO. 08-20231-1

- *Lyn E. Beggs, J.D., General Counsel*

Sherman Mayor, Esq. and Cheryl Horner, Esq. were present as counsel for Dr. Carrol.

Dr. Held named the adjudicating Board Members who would be considering the matter.

Since neither Dr. Held nor Dr. Rodriguez were adjudicating Board members for the adjudication and Dr. Anwar was not in attendance, Mr. Heffner presided over the matter.

Mr. Marcher explained that the Hearing Officer had recommended dismissal of the complaint in this case without prejudice, based upon the inability of Board staff to obtain the requisite evidence to move forward in the case, through no fault of the staff. The case has been ongoing for some time, and has been continued several times. A dismissal without prejudice means that the Board could re-file the complaint at some time in the future if staff is able to obtain the requisite evidence.

Dr. Fischer moved that the Board accept the Hearing Officer's recommendation and dismiss the complaint without prejudice. Dr. Berndt seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 22

CONSIDERATION AND DISCUSSION REGARDING SECURITY MEASURES AT
BOARD MEETINGS

- *Michael J. Fischer, M.D., Board Member; Douglas C. Cooper, CMBI, Executive Director*

Dr. Fischer stated that in furtherance of the discussions held during previous meetings regarding whether there was a need for security at the Board's meetings, the staff had looked into it and had provided a proposed contract, which seems reasonable to him.

Mr. Cooper suggested that if the Board decided to go forward with security at its meetings, it should do it consistently and constantly, as opposed to doing so only when a determination is made that there may be more tension than usual at a particular meeting. He sent out an ExecNet through AIM to other Board Executive Directors and the majority response was that they have security at their meetings. Additionally, the contract the State has with Andrews International is very reasonable. He recommended the Board hire them for all Board meetings, to be present at both the Reno and Las Vegas locations. The company's officers are all Post-certified and will be armed.

Dr. Fischer moved that the Board enter into a contract with Andrews International for security services at Board meetings, both in Las Vegas and Reno. Ms. Ruthe seconded the motion.

Discussion ensued regarding the costs involved.

A vote was taken on the motion, and it passed unanimously.

Agenda Item 23

REPORTS

- Physician Assistant Advisory Committee - *John B. Lanzillotta, P.A.-C, Advisory Committee Member*
- Practitioner of Respiratory Care Advisory Committee - *John H. Steinmetz, R.R.T., Advisory Committee Member*
- Investigative Committees - *Charles N. Held, M.D., President, Chairman, Investigative Committee A*
Benjamin J. Rodriguez, M.D., Vice President, Chairman, Investigative Committee B
- Consideration of Cases Recommended for Closure by the Committees
- Investigations Division
 - Status of Investigative Caseload - *Pamela J. Castagnola, Interim Chief of Investigations*
 - Quarterly Compliance Report - *Johnna S. LaRue, Compliance Officer*
- Nevada State Medical Association Report - *Lawrence P. Matheis, Executive Director, Nevada State Medical Association*
- Clark County Medical Society Report - *Mitchell D. Forman, D.O., FACR, FACOI, FACP, President, Clark County Medical Society; Benjamin J. Rodriguez, M.D., Board Vice President*

Physician Assistant Advisory Committee

Ms. Munson stated she had been advised by the Advisory Committee that they had nothing to report at this meeting, but would have a report for the Board at its December meeting.

Practitioner of Respiratory Care Advisory Committee

Ms. Munson stated she had been advised by the Advisory Committee that they had nothing to report at this meeting.

Investigative Committees – *Charles N. Held, M.D., President, Chairman, Investigative Committee A*
Benjamin J. Rodriguez, M.D., Vice President, Chairman, Investigative Committee B

- Consideration of Cases Recommended for Closure by the Committees

Dr. Held reported that Investigative Committee A had met and considered a total of 124 cases, authorized the filing of a formal complaint in 6 cases, sent 1 case out for peer review, requested an appearance in 6 cases, issued 15 letters of concern, referred 7 cases back to investigative staff for further investigation or follow-up, and recommended closure of a total of 89 cases.

Mr. Heffner moved to approve for closure the cases recommended by Investigative Committee A. Dr. Rodriguez seconded the motion, and it passed unanimously.

Dr. Rodriguez reported that Investigative Committee B had met and considered 97 cases, authorized the filing of a formal complaint in 3 cases, sent 2 cases out for peer review, requested an appearance in 5 cases, issued 20 letters of concern, referred 5 cases back to investigative staff for further investigation or follow-up, and recommended closure of a total of 62 cases.

Mr. Heffner moved to approve for closure the cases recommended by Investigative Committee B. Dr. Fischer seconded the motion, and it passed unanimously.

Investigations Division

- Status of Investigative Caseload

Ms. Castagnola reported that there were currently 370 open investigative cases, which was a decrease from 435 open cases at the June Board meeting. The current number of cases per investigator is 53 on average. There are 28 peer reviews in the field and 20 peer reviews awaiting assignment.

- Quarterly Compliance Report

Ms. LaRue reported that two Licensing compliance cases and no Investigative compliance cases had been closed since the last report. To date in 2010, 33 formal complaints had been filed and 150 letters of concern had been issued. Since the last report, \$2,200.00 in compliance monitoring fees had been collected. To date in 2010, \$67,634.52 in costs and \$22,600.00 in fines had been collected. So far this year we have collected more money than in past years. An additional physician was sent to outside collections due to non-payment, so there are now two in outside collections.

Discussion ensued regarding the uncollectable compliance fees receivable and the procedure that would be required in order to write these fees off. Ms. Jenkins explained that last year the Board wrote off \$11,000.00 in bad debt, which was attributed to a doctor who had passed away and it was determined the debt would be uncollectible.

Mr. Cooper recommended that this be accomplished at the next meeting.

Nevada State Medical Association Report

Lawrence P. Matheis, Executive Director of the Nevada State Medical Association (NSMA), said he would provide an article for the Board's next newsletter.

He then reported there are a record number of doctors who have resigned from the Medicare program and this is going to cause access problems for Nevadans on Medicare and will affect everyone who deals with healthcare systems. Another impending issue involves the implementation of Assembly Bill 123 from the 2009 Legislative Session, which significantly expanded the regulation of ambulatory surgery centers and for the first time requires permitting of office practices that use one of the three levels of anesthesia, which will have to be done beginning October 1st. This will affect approximately 200 office practices and will be a major undertaking. The intention is to prevent future incidents of health-care associated infections.

The NSMA's current priority is to deal with the election process and to identify the issues that will be coming up in the next legislative session. His most recent count was 72 or 73 bill drafts that deal with healthcare.

Discussion ensued regarding practice integration versus private practice, and regarding electronic medical records.

Clark County Medical Society Report

Mitchell D. Forman, D.O., FACR, FACOI, FACP, President of the Clark County Medical Society (CCMS), stated he would be happy, in his capacity as the Dean at Touro University Nevada, to work with both boards to develop and implement educational programs related to drug abuse and monitoring.

Mr. Cooper invited Dr. Forman to participate as a guest author in the Board's newsletter.

Dr. Forman said he had assumed the presidency of the CCMS on July 1st of this year. They are in the process of recruiting an Executive Director. CCMS continues to serve as a resource for the public, the legislative membership and the media in issues involving healthcare and is actively involved in a membership recruitment drive to make their society more relevant to community physicians through a variety of benefits. They have been involved in interviewing candidates regarding their positions on health-related topics in preparation for the November elections and are co-sponsoring with Touro University a series of educational events and CMEs in the areas of ethics, professionalism and end-of-life issues.

Agenda Item 24

EXECUTIVE STAFF/STAFF REPORTS

- Update Regarding Legislative Initiatives for 2011 Legislative Session - *Douglas C. Cooper, CMBI, Executive Director*
- Consideration and Approval of Proposed 2011 Meeting Schedule - *Douglas C. Cooper, CMBI, Executive Director*
- Consideration of Request for Staff and Board Member Attendance at Educational Meetings - *Douglas C. Cooper, CMBI, Executive Director*
- Quarterly Update on Finances - *Donya Jenkins, Finance Manager*
- Informational Items - *Douglas C. Cooper, CMBI, Executive Director*
 - Prescription Drug Abuse Project
 - Legislative Committee on Health Care

Update Regarding Legislative Initiatives for 2011 Legislative Session

Mr. Cooper stated that staff had pared down the items on the list of initiatives provided to the Board at its June meeting down to the following: eight changes to current statutes, one addition where there is no existing statutory citation and correction of one administrative error.

Ms. Daniels explained that the administrative error was made to NRS 630.277(c) and (d) when those sections were changed in 2009. Those sections now reference the CAAHEP and COARC which are accrediting educational bodies for respiratory care schools, and not certifying bodies. The statute needs to return to its previous language that referenced a certifying examination by the NBRC, which is the National Board for Respiratory Care, the certifying body.

Mr. Cooper said that he had been advised by those "in the know" that the Board would be wise not to try to introduce its own bill, since it has nothing of substance to change, so instead the tack will be to try to attach the Board's initiatives to friendly bills that reference NRS 630 in order to get them passed.

Mr. Cooper then described each of the proposed initiatives.

Discussion ensued regarding the proposed change to NRS 630.307, to require that hospitals report to the Board a change in a licensee's privileges within 24 hours of the change instead of within 30 days. The consensus was to amend the initiative to identify those events, particularly those involving patient safety, that will be required to be reported within 24 hours, as opposed to requiring all events be reported in that short timeframe.

Consideration and Approval of Proposed 2011 Meeting Schedule

Mr. Cooper stated that Dr. Anwar had advised him the proposed schedule was acceptable to him.

Both Dr. Rodriguez and Dr. Neyland stated they were unavailable on March 4 and 5, the dates proposed for the March meeting.

All Board members indicated they would be available on March 11 and 12, so Mr. Cooper said the March meeting would be moved to March 11 and 12, pending availability of Dr. Anwar.

Mr. Cooper asked whether any Board Members had any other conflicts with the proposed schedule, and none were enunciated.

Dr. Held moved the Board accept the proposed schedule changing the March meeting to March 11 and 12, checking with Dr. Anwar to confirm his availability. Dr. Fischer seconded the motion, and it passed unanimously.

Consideration of Request for Staff and Board Member Attendance at Educational Meetings

Mr. Cooper outlined the requests for attendance at educational meetings which had been provided to the Board for consideration, and the costs associated with those requests.

Dr. Berndt moved that the Board approve the requests for training. Ms. Clark seconded the motion, and it passed unanimously.

Quarterly Update on Finances

Ms. Jenkins highlighted the information contained in the financial documents provided to the Board – the Balance Sheet, the Profit and Loss and the Profit and Loss Budget vs. Actual. In summary, the Board is currently ahead of its budget by \$85,094.28.

Informational Items

- Prescription Drug Abuse Project

Mr. Cooper stated he had already reported under Item 9 what he had planned to report under this item.

- Legislative Committee on Health Care

Mr. Cooper explained that he believed the Board had made a successful run with the Legislative Committee on Health Care and had been as cooperative as possible with the Committee. He had made suggestions to the Committee on their agenda item regarding cooperation between agencies that were well-taken and Senator Weiner has submitted a bill draft request that addresses cooperation between agencies. Staff supports this as this Board has always cooperated with other agencies. The problem staff has faced is obtaining information from some of the other agencies.

Agenda Item 25

LEGAL REPORTS - Lyn E. Beggs, J.D., General Counsel

- Board Litigation Status

Ms. Beggs reported that at the meeting, the Board had considered one adjudication, one dismissal without prejudice and ten settlements. Thirty-eight letters of concern were authorized at the Investigative Committee meetings in August, 19 formal complaints had been filed since the June Board meeting, 100 cases were currently pending in the Legal Division, 19 pending filing of formal complaints and 53 scheduled for hearing through February 16, 2011. There had been one summary suspension of license since that last Board meeting. There are three matters pending before the District and Supreme Courts and those matters are ongoing. Ms. Beggs wanted to note the substantial decrease in the backlog of cases in the Legal Division. The majority of the cases pending are current cases. Having an additional attorney has allowed the Legal Division to clear out the backlog and they are now dealing with more current occurrences versus those that occurred seven or eight years ago and are also better able to accomplish their other duties.

Agenda Item 26

CONSIDERATION OF REQUEST OF BARRY MARKMAN, M.D. FOR REMOVAL OF CONDITIONS ON HIS MEDICAL LICENSE

- *Barry Markman, M.D.*

Thomas Shang, M.D., appeared with Dr. Markman.

Ms. Daniels explained that Dr. Markman had appeared before the Board in March on his application to change his status from inactive to active. At that time, the Board granted him an active license with conditions. One of those conditions required him to submit information to the Board for review at this meeting, which he has. From a review of the material provided, Dr. Markman is short 28 patient charts in order to comply with the original condition placed upon him. She listed all the conditions the Board had placed upon Dr. Markman in March.

Ms. Ruthe asked why the requirement was not met, and Dr. Markman explained that Dr. Shang had taken an extended trip out of the country, Dr. Markman had personal matters with his family's health he had to tend to, and the volume of patients was slow during the summer.

Dr. Shang stated that Dr. Markman had done very well in the clinics and he believed Dr. Markman was ready to advance.

Dr. Markman stated he was up to speed, but he could complete the missing 28 charts if he had to.

Dr. Rodriguez moved that the Board remove the restrictions upon Dr. Markman's license contingent upon his completion of the 28 patient charts previously requested before the end of the year. Mr. Heffner seconded the motion.

Ms. Daniels asked for clarification of her understanding that Dr. Markman will not need to appear before the Board again; that once he completes the charts, the restrictions will be removed, and Dr. Rodriguez stated that was his intent.

A vote was taken on the motion, and it passed unanimously.

Agenda Item 27

CONSIDERATION OF REMOVAL OF CONDITIONS ON MEDICAL LICENSE OF STEPHANIE ASHMAN, M.D.

- *Lynnette L. Daniels, Chief of Licensing*

Ms. Daniels stated that Dr. Ashman's preceptor, Dr. Michaels, had submitted information for the Board's review regarding Dr. Ashman's four-month preceptorship, and the Board now needed to determine whether Dr. Ashman has fulfilled the requirements of her preceptorship to its satisfaction.

Dr. Ashman described her preceptorship with Dr. Michaels. Dr. Michaels is an internal medicine physician and Dr. Ashman worked with her on an out-patient basis only. She generally saw approximately 10 to 12 patients a day. She stated she is studying for internal medicine board recertification, which she will be taking in October.

Dr. Rodriguez moved that the Board remove the conditions on Dr. Ashman's license. Dr. Berndt seconded the motion, and it passed unanimously.

Agenda Item 28

LICENSURE RATIFICATION

- Ratification of Licenses Issued, and Reinstatements of Licensure and Changes of Licensure Status Approved Since the June 11, 2010 Board Meeting

Dr. Fischer moved that the Board ratify the licenses issued, reinstatements of licensure and changes of licensure status approved since the June 11, 2010 Board Meeting. Dr. Rodriguez seconded the motion, and it passed unanimously.

Agenda Item 29

APPEARANCES FOR CONSIDERATION OF ACCEPTANCE OF APPLICATIONS
FOR LICENSURE

29(a) Dale Mericle, M.D.

Dr. Mericle was present with his attorney, Lee Hodgkin, Esq.

Mr. Hodgkin provided the Board with three exhibits, marked as Exhibits 7, 8 and 9, and described them. Exhibit 7 was submitted in support of Dr. Mericle's claim that the day Modoc Medical Center allegedly terminated his privileges was actually his last day of work there. Exhibit 8 was submitted in support of Dr. Mericle's claim that he was never advised by the California Medical Board that a complaint had been filed against him, and to Dr. Mericle's knowledge no complaint has been filed against him. Exhibit 9 was submitted as proof that Dr. Mericle had been forthright in reporting to the Board the alleged incident at Modoc Medical Center, in that on March 18, 2010, he had provided the Board with the same documents it received in response to its letter to Modoc Medical Center.

Ms. Daniels stated that staff had verified Dr. Mericle does not have any formal complaints on file with the California Medical Board.

Dr. Held stated the reason Dr. Mericle's application had been tabled at the June Board meeting was there was a question whether Dr. Mericle had ever been notified by Modoc Medical Center regarding his loss of privileges. Subsequently, the Board received information from Modoc Medical Center indicating they have no record that Dr. Mericle was notified of termination of his privileges.

Dr. Held moved that the Board grant Dr. Mericle a license contingent upon the following: (1) that he maintain his ABMS certification in family medicine as long as he maintains a license in Nevada; and (2) that he undergo a psychiatric evaluation, including questioning to determine specifically whether a requirement to have a female staff member present when he is examining female patients would be appropriate. Dr. Fischer seconded the motion.

Mr. Cooper stated that the psychiatric examination would be at Dr. Mericle's expense.

Ms. Ruthe said she wanted it on the record that in light of everything she had read, she had a strong problem with Dr. Mericle's misrepresentations and his lack of disclosure.

A vote was taken on the motion, and it passed, with Ms. Ruthe voting against the motion and all other Board members voting in favor of the motion.

Dr. Held amended his prior motion to include the requirement that the psychiatric examination be conducted by Melissa Piasecki, M.D., and Dr. Mericle be issued a license contingent upon successful completion of the psychiatric evaluation, with questions posed regarding the appropriateness of female chaperones during exams. Dr. Fischer seconded the amended motion, and it passed, with Ms. Ruthe voting against the motion and all other Board members voting in favor of the motion.

29(b) Stephen Dubin, M.D.

Gary DeShazo, D.O., appeared with Dr. Dubin.

Dr. Held asked Dr. Dubin whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did not.

Dr. Rodriguez asked Dr. Dubin how he felt he did on his PACE evaluation, and Dr. Dubin said he thought he had done well. PACE did suggest that he update his knowledge, so his proposal to the Board was that he complete a three-month preceptorship with family physician Dr. DeShazo, as well as 25 units of CME in family medicine.

Dr. Rodriguez asked whether Dr. Dubin had considered a Board review course, and Dr. Dubin said he would do whatever study course the Board directed, and may even obtain his board certification in ob/gyn. Dr. Dubin stated he had taken and passed the SPEX examination the previous year.

Dr. Rodriguez asked how Dr. DeShazo would incorporate Dr. Dubin into his practice, and Dr. Dubin described his plan for the preceptorship.

Dr. Rodriguez stated there were a couple of areas in the PACE report that indicated significant deficiencies, and asked Dr. DeShazo whether he had reviewed those. Dr. DeShazo indicated that he had, and Dr. Rodriguez encouraged Dr. DeShazo to work with Dr. Dubin to specifically address those weaknesses during the preceptorship.

Discussion ensued regarding Dr. Dubin's proposed plan for re-entry into clinical practice and what additional requirements should be imposed upon him to ensure that he is able to safely return to practice due to the fact he has been out of practice for so long.

Dr. Rodriguez moved that following successful completion of Dr. Dubin's preceptorship, the Board re-evaluate Dr. Dubin to determine the appropriateness of completing Phase II of the PACE program or a similar program.

Discussion ensued regarding the fact that in order for Dr. Dubin to participate in a preceptorship, the Board would have to grant him an active license with conditions.

Dr. Held moved that the Board table discussion of Dr. Dubin's application, that he complete Phase II of the PACE program, and that the Board communicate with PACE in advance to ensure they know that Dr. Dubin is going into family practice. When Dr. Dubin completes that program and returns in December, he is to bring with him an elaborated preceptorship proposal including both direct, over-the-shoulder evaluation of his first new patients and specific patient numbers. Dr. Berndt seconded the motion.

Dr. Dubin asked whether it would make a difference if he elected to obtain his board certification in ob/gyn. Discussion ensued regarding the fact that he would still be in the same position, in that he still will have not practiced medicine for 13 years.

A vote was taken on the motion, and it passed unanimously.

29(c) Elouisa Farrales, M.D.

Dr. Held asked Dr. Farrales whether she wanted her application to be considered in closed session, with the public being excluded, and she said that she did.

Dr. Held moved that the Board go into Closed Session. Dr. Rodriguez seconded the motion, and it passed.

Upon returning to Open Session, Dr. Held moved that the Board decline to exercise its discretion to grant Dr. Farrales a license by endorsement. Dr. Rodriguez seconded the motion, and it passed unanimously.

Dr. Held moved that the Board grant an unrestricted license to Dr. Farrales contingent upon successful passage of a peer review. Dr. Rodriguez seconded the motion, and it passed unanimously.

29(d) Amanda Rosales, R.R.T.

Dr. Held asked Ms. Rosales whether she wanted her application to be considered in closed session, with the public being excluded, and she said that she did not.

Ms. Clark questioned Ms. Rosales regarding the fact that she had responded in the negative to questions 20, 21 and 25 on her application, when she should have responded in the affirmative, due to disciplinary action that was taken against her license in Arizona in 2006.

Ms. Rosales explained that at first she didn't fully understand the questions. Then, after readdressing them and completely understanding them, she still wasn't sure how to answer because she had been granted a temporary license in Arizona, which had expired, so she couldn't work until she went before the Board for approval of her permanent license, but she didn't know whether that would be considered a disciplinary action. So that is why she answered the questions in the negative.

Ms. Beggs asked Ms. Rosales whether she had referred to the stipulation she had entered into with the Arizona State Board of Respiratory Care Examiners when she applied for a license in Nevada. Ms. Rosales stated she did not because at the time she did not remember it, but when she was notified to appear before the Board, she went through her paperwork and that is when she found the minutes and read through them and saw that she did have to pay a fine.

Ms. Clark cautioned Ms. Rosales that she needs to pay closer attention when applying for a license in the future, and if she finds a gray area, she needs to address it with the appropriate personnel at the licensing board, because this is very serious and the way she filled out the application borders on deceit, if not full-blown deceit, and that is a real problem.

Ms. Ruthe stated that she thought Ms. Rosales should be required to withdraw her application and reapply with all questions answered appropriately on the new application.

Ms. Clark moved that the Board grant Ms. Rosales' application for licensure, contingent upon completion of some ethics training.

Dr. Rodriguez stated there are several points that transcend an application and will merge into her practice as a respiratory therapist: one is attention to detail, which is paramount in all medical care. Another is honesty, and she is here so the Board can determine whether she was trying to deceive the Board or made an honest mistake. The third is uncertainty, and she is going to come across situations in which she doesn't have the adequate fund of knowledge to make the correct decision on the care of a patient, and in those situations she needs to ask someone, as she should have in the case of her uncertainty in responding to some of the questions on her application.

Dr. Fischer seconded the motion, and it passed, with Ms. Ruthe opposed to the motion and all other Board members voting in favor of the motion.

Ms. Clark amended her motion as follows: that the Board grant Ms. Rosales' application for licensure, contingent upon completion of proper ethics training within 90 days.

Discussion ensued regarding the number of ethics training hours that should be required and the timeframe in which she should have to complete them.

Ms. Clark amended her motion as follows: that the Board grant Ms. Rosales' application contingent upon completion of 10 hours of ethics training within one year, with two of those hours taken in person. Dr. Fischer seconded the amended motion, and it passed, with Ms. Ruthe opposed to the motion and all other Board members voting in favor of the motion.

29(e) Steven Spillers, M.D.

Dr. Held asked Dr. Spillers whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did not.

Dr. Berndt questioned Dr. Spillers regarding the fact that he has not passed a major examination in the last ten years.

Dr. Spillers explained that when he completed his fellowship, he took and passed the only clinical neurophysiology examination available at the time, which was the ABPN, the American Board of Psychiatry and Neurology, which is now under the ABMS umbrella. It was a general neurology exam, and at that time there were no subspecialty qualification exams for anything.

Dr. Berndt asked him what he planned to do if granted a Nevada license, and Dr. Spillers explained he would be performing telemedicine neurophysiology.

Dr. Berndt moved that the Board grant Dr. Spillers' application for licensure by endorsement. Dr. Neyland seconded the motion, and it passed unanimously.

29(f) Kent Swaine, M.D.

Dr. Held asked Dr. Swaine whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did not.

Dr. Fischer explained that Dr. Swaine has not practiced clinical medicine since 2007, due to the fact that his license was suspended in November 2007, and then revoked in October 2008. He stated he had some concerns regarding the information received from Professional Renewal Center, which included a statement that they "cannot validly, fully and accurately predict all future behavior and actions of Dr. Swaine," as well as with regard to information received from the Nevada Professionals Assistance Program, in which Dr. Peter Mansky stated Dr. Swaine had one of the most severe cases of opiate dependency he had ever seen.

Dr. Fischer asked Dr. Swaine to explain his current status and why the Board should grant him a license in light of the fact that in the past he had made stipulations with the Board and then violated them.

Dr. Swaine explained that he has been in sobriety and working very hard at it since July of 2008. He described the treatment he has received and said he has been employed as a medical assistant in Las Vegas for the last year or so. He has learned a lot about himself and how to respect others and to not think he is impervious to rules and regulations. He stated he realized, and apologized, that he had answered Question 31 on the application incorrectly, in that he responded to the question in the negative when he should have answered it in the affirmative because his privileges and medical staff membership had been revoked by St. Rose Dominican Hospitals.

Dr. Fischer questioned the appropriateness of the amount of pain medication Dr. Swaine had prescribed to the patient that was the subject of the malpractice claim pending against him. Discussion ensued.

Ms. Clark questioned Dr. Swaine as to what he was doing to maintain his sobriety, and Dr. Swaine explained. He stated he is currently under a 10-year contract with the Nevada Professionals Health Program.

Ms. Beggs advised the Board that had Dr. Swaine not violated his probation, and had his license not been revoked by the Board in response thereto, he would still be under probation, with 16 terms. She read sections 3 and 4 of NRS 630.358, the statute that addresses restoration of a license.

Ms. Clark asked Dr. Swaine where he planned to work if granted a license, and Dr. Swaine stated it would probably be in an outpatient setting, possibly with his sponsor at his internal medicine clinic. He also stated he would be willing to go back to work without the ability of prescribing controlled substances, if that would make the Board more comfortable.

Ms. Daniels stated she did not believe Dr. Swaine was completely forthcoming in completing his application.

Discussion ensued regarding whether it would be appropriate to grant Dr. Swaine a license at that time or what requirements the Board might impose upon Dr. Swaine prior to granting him a license.

Dr. Held moved that the Board table consideration of Dr. Swaine's application and that Dr. Swaine return in six months with six additional months of sobriety and a clear-cut action plan for re-entry into practice. Dr. Fischer seconded the motion, and it passed, with Ms. Ruthe abstaining from the vote and the remaining Board members voting in favor of the motion.

29(g) James King, M.D.

Dr. Held asked Dr. King whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did.

Dr. Fischer moved that the Board go into Closed Session. Dr. Neyland seconded the motion, and it passed.

Upon returning to Open Session, Dr. Rodriguez moved that the Board decline to exercise its discretion to grant Dr. King a license by endorsement. Dr. Fischer seconded the motion, and it passed unanimously.

Dr. Rodriguez moved that the Board grant an unrestricted license to Dr. King contingent upon successful passage of a peer review in phlebology. Dr. Berndt seconded the motion, and it passed unanimously.

29(h) Swati Agarwal, M.D.

Dr. Held asked Dr. Agarwal whether she wanted her application to be considered in closed session, with the public being excluded, and she said that she did not.

Dr. Neyland questioned Dr. Agarwal regarding the fact that she has not completed 36 months progressive postgraduate training.

Dr. Agarwal described her medical education and training. She explained that her two ophthalmology fellowships were not recognized by ACGME, as no ophthalmology fellowships are recognized by ACGME. She recently completed a one-year internship in general surgery, which is recognized by ACGME.

Dr. Neyland moved that the Board grant Dr. Agarwal's application for licensure by endorsement. Ms. Ruthe seconded the motion, and it passed unanimously.

Agenda Item 30

MATTERS FOR FUTURE AGENDA

Mr. Cooper stated the following items would be included on the agenda for the December Board meeting: revision of the Board's mission statement; consideration and approval of the 2011 fiscal year budget; discussion of the AIM assessment findings and the annual review and discussion of professional competency of staff.

Agenda Item 31

ELECTION OF OFFICERS AND APPOINTMENT OF COMMITTEE MEMBERS

Dr. Fischer nominated Dr. Held to serve another term as President. Dr. Rodriguez seconded the nomination, and it passed, with Dr. Held abstaining from the vote and all other Board members voting in favor of the nomination.

Dr. Fischer nominated Dr. Rodriguez to serve another term as Vice President. Dr. Held seconded the nomination, and it passed unanimously.

Dr. Held nominated Ms. Clark to serve as Secretary-Treasurer. Dr. Rodriguez seconded the nomination. Dr. Held asked Ms. Clark if she was willing to serve, and she stated she was. A vote was taken and the nomination passed, with Ms. Clark abstaining from the vote and all other Board members voting in favor of the nomination.

Dr. Held named the Board members on the two Investigative Committees and asked if they were all willing to continue to serve on those committees. Hearing that none were unwilling to do so, he stated those committees would remain the same.

Mr. Cooper then explained the procedure of the License Application and Malpractice Review Committee was changing and in the future there would be no formal meetings. Cases will be sent to each of the individual members and the members will submit their input separately to staff.

Dr. Held asked Ms. Ruthe whether she was willing to serve on the License Application and Malpractice Review Committee, and Ms. Ruthe stated she was.

Agenda Item 32
PUBLIC COMMENT

Dr. Held asked whether there were any members of the public present who would like to make a public comment, and there were none.

Mr. Cooper advised the Board that Ms. Ruthe would not be attending the December Board meeting, due to a prior, long-standing commitment.

ADJOURNMENT

Dr. Held adjourned the meeting at 4:05 p.m.

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